



March 7, 2019

Via <https://foiaonline.regulations.gov>

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: **Freedom of Information Act Request – Documents Related to Portland Harbor
Superfund Site**

Dear National Freedom of Information Officer:

On behalf of the Portland Harbor Community Coalition, we hereby request access to the records described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the pertinent Environmental Protection Agency (“EPA” or “Agency”) regulations, 40 C.F.R § 2.100 *et seq.*

Definitions applicable to this request:

“Portland Harbor Superfund Site” shall refer to the Superfund Site in Portland, Oregon, including the in-river and an upland portion of the lower Willamette River, contaminated from decades of industrial use along the Willamette River in and near to the Portland Harbor.

“EPA” shall refer to the United States Environmental Protection Agency, and any individual acting as an agent on its behalf.

“Potentially Responsible Parties” or “PRP” shall refer to individuals, companies, or any other parties that are potentially liable under CERCLA for costs to remediate hazardous waste at the Portland Harbor Superfund Site.

“NW Natural” shall refer to the company NW Natural, and its parent company NW Natural Holdings, headquartered in Portland Oregon. It shall also refer to any individual acting as an agent on its behalf, including any consultants or attorneys hired to advocate on the company’s behalf, including but not limited to the Pearl Law Group, Patty Dost, and Elliot Laws.

“Benzo(a)pyrene” or “BaP” shall refer to the polycyclic aromatic hydrocarbon benzo(a)pyrene.

“PAHs” shall refer to polycyclic aromatic hydrocarbons.

“cPAHs” shall refer to carcinogenic PAHs.

“Lower Willamette Group” shall refer to the working group of the ten parties that signed an agreement with the EPA to conduct and support the Remedial Investigation and Feasibility Studies (RI/FS) necessary for cleanup of the site. Group members include Arkema Inc., Bayer CropScience, Inc., BNSF Railway Company, Chevron U.S.A. Inc., City of Portland, EVRAZ, Gunderson LLC, Kinder Morgan Liquids Terminals, NW Natural, Phillips 66 Company, Port of Portland, Siltronic Corporation, TOC Holdings Co., and Union Pacific Railroad Company.

“DEQ” shall refer to the Oregon Department of Environmental Quality, and any individual acting as an agent on its behalf.

“Communications” shall refer to electronic mail and all associated attachments, letters, faxes, calendar appointments, in-person meetings, phone calls, text messages, or any other correspondence.

“Records” includes correspondence, minutes of meetings and a list of participants for those meetings, daily agendas and calendars, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored), and includes materials that the agency has either created or obtained.

To narrow the scope of the search, for the purposes of this request, “records” does not include emails in unindexed email accounts, but does include emails in secondary email accounts, emails entered into the agency’s correspondence tracking system, and communications sent through personal email or encrypted applications to conduct official business.

Description of Records Sought:

This FOIA request seeks:

- (1) All communications between the EPA and NW Natural pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.
- (2) All communications between the EPA and the Lower Willamette Group pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.
- (3) All communications between the EPA and NW Natural pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.
- (4) All communications between the EPA and Elliot Laws pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.

- (5) All communications between the EPA and Pearl Legal Group PLC pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.
- (6) All communications between the EPA and any PRP pertaining to cPAHs or benzo(a)pyrene from January 5, 2017 through the date of completion of this records request.
- (7) All communications between the EPA and DEQ pertaining to cPAHs or benzo(a)pyrene from January 5, 2015 through the date of completion of this records request.

We request these documents in electronic form if possible, but hard copies would also be acceptable. If a response is posted on FOIAonline, we request prompt notification by email at jparekh@earthjustice.org, and pgoldman@earthjustice.org that responsive documents have been posted.

This request seeks responsive records in the possession, custody, or control of any EPA office, including, but not limited to, the Office of Resource Conservation and Recovery, and EPA Region 9.

In the event that any requested document is claimed, or continues to be claimed, exempt from disclosure or review, or otherwise withheld, we request an index or log of documents withheld, with the maximum possible identifying information that you can provide, including a description of the document withheld, its date, its location, its recipient(s) and the specific reason(s) the document is being withheld. 5 U.S.C. § 552(b). We further request that EPA make all information requested publicly available on its website. 5 U.S.C. § 552(a)(2)(D)(i)(II); *see also* Freedom of Information Act; Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4683 (Jan. 26, 2009) (“All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.”).

Request for a Fee Waiver

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l)(1).

FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, EPA has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of government; (2) the disclosure likely will contribute to understanding of government

operations or activities; (3) the disclosure will contribute significantly to the public's understanding; and (4) the disclosure is not primarily in the requester's commercial interest. *See* 40 C.F.R. § 2.107(l)(1)-(3).

As one court explained, if a non-profit organization has “identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership,” then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that the requesting groups meet the required criteria and are entitled to a full fee waiver.

The Portland Harbor Community Coalition (“PHCC”) is a group of individual community groups elevating the needs of the most-impacted communities impacted by pollution in Portland Harbor. Our core member groups include: American Indian Movement, Portland Chapter, Brown Folks Fishing, Camp Elso, East European Coalition, Get Hooked Foundation, Iraqi Society of Oregon, Lideres Verdes, NAACP, Portland African American Leadership Forum, Portland Committee for Human Rights in the Philippines, Right 2 Survive, and Wisdom of the Elders.

We ask for a full fee waiver because “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of these operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(iii). This request concerns a matter of over-riding public importance. The Portland Harbor Superfund Site is one of the most contaminated sites in the country with a cleanup of over \$1 billion. Community members living near to this site regularly fish, swim and recreate in the Portland Harbor area and face serious public health risks as a consequence. The public has a right to know about all communications between the EPA and private parties regarding the EPA's recent proposal to weaken cleanup standards for carcinogenic contaminants and to reduce the scope of dredging remediation activities at the Portland Harbor Superfund Site. Daylighting this information will contribute greatly to public understanding of the operations of EPA on this important public policy matter.

Moreover, PHCC has the expertise to analyze the requested records and the ability to disseminate the information and its analysis to the public. PHCC regularly works with experts that can analyze and interpret information obtained to determine whether they pose unacceptable risks to human health and the environment. PHCC then disseminates this information to educate the public and allow increased participation in regulatory processes. For example, PHCC was actively involved in raising public awareness about the Portland Harbor Superfund Site, and engaging the public to submit comments on the proposed Portland Harbor Superfund cleanup plan. PHCC submitted comments on the Proposed Explanation of Significant Differences to the EPA, and organized thousands of community members to submit comments on EPA's proposed cleanup plan. Additionally, PHCC engages in advocacy aimed at educating and organizing interested people about the Portland Harbor Superfund Site and its potential impacts to public health and the environment. In short, Portland Harbor Community Coalition works actively with other nonprofit organizations, local communities, tribal governments, and other individuals and entities to confront the risks of hazardous contamination at the Portland Harbor Superfund Site.

Portland Harbor Community Coalition and the groups they collaborate with, disseminate information about the Portland Harbor Superfund Site and the associated impacts of hazardous waste releases into waters of the United States through newsletters, web sites, action alerts, press releases, social media, and collaboration with others. They will evaluate the records disclosed and share them. These groups have the expertise and experience to evaluate this information and disseminate it appropriately. *See Friends of the Coast Fork v. United States Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997); *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”). Portland Harbor Community Coalition is eminently qualified and able to analyze the requested records and disseminate the information on this important issue to the public.

Finally, Portland Harbor Community Coalition is a fiscally sponsored non-profit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA’s fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requestors” (quoting legislative history)). Their sole interest in obtaining the records is to analyze the information, incorporate it into educational materials, and disseminate that information along with their analysis to the public. Accordingly, Portland Harbor Community Coalition is entitled to a fee waiver. *See* 40 C.F.R. § 2.107(l)(1)-(3).

Please do not hesitate to call me to clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (206) 343-7340 ext. 1044. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,

Jaimini Parekh
Patti Goldman
Attorneys for
Portland Harbor Community Coalition